

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY)	MDL NO. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION: 01-CV-12257-PBS
)	Subcategory Docket: 06-CV-11337-PBS
)	
THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
)	
<i>U.S. ex rel. Ven-A-Care of the Florida Keys,</i>)	Magistrate Judge Marianne B. Bowler
<i>Inc. v. Abbott Laboratories, Inc., et al.,</i> No.)	
06-CV-11337-PBS)	
)	
<i>U.S. ex rel. Ven-A-Care of the Florida Keys,</i>)	
<i>Inc. v. Dey, Inc., et al.,</i> No. 05-CV-11084-)	
PBS; and)	
)	
<i>U.S. ex rel. Ven-A-Care of the Florida Keys,</i>)	
<i>Inc. v. Boehringer Ingelheim Corp. et al.,</i>)	
No. 07-CV-10248-PBS)	

DECLARATION OF DAVID S. TORBORG

David S. Torborg hereby declares as follows:

1. I am an attorney-at-law at Jones Day, counsel for Defendant Abbott Laboratories, Inc., ("Abbott") and am admitted to practice before the courts of the District of Columbia, and *pro hac vice* before this Court.

2. Attached hereto as Exhibit A is a listing of the exhibits filed with Defendants Abbott Laboratories, Inc., Dey, Inc., Dey, L.P., Dey L.P., Inc., Boehringer Ingelheim Roxane, Inc., and Roxane Laboratories, Inc.'s Combined Local Rule 56.1 Statement of Additional Material Facts Pertinent to the United States' Motions for Partial Summary Judgment Against Defendants. Those exhibits, incorporated herein by reference, are true and correct copies of the documents as described in the attached list.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 28, 2009 in Washington, District of Columbia.

/s/ David S. Torborg
David S. Torborg

EXHIBIT A

#	EXHIBIT DESCRIPTION	DEP. EXHIBIT
1	Sullivan Deposition Transcript Excerpt, 3/12/08	N/A
2	Reid Deposition Transcript Excerpt, 12/15/08	N/A
3	Ridout Deposition Transcript Excerpt, 12/5/08	N/A
4	Kramer Deposition Transcript Excerpt, 3/25/08	N/A
5	Affidavit of Sandy Kramer (unsigned)	Abbott 655
6	November 30, 1992 State of Michigan Department of Social Services memorandum to Vern Smith regarding, "Elimination of Actual Acquisition Cost Reimbursement."	Abbott 656
7	Nesser Deposition Transcript Excerpt, 12/12/08	N/A
8	Campana Deposition Transcript Excerpt, 8/19/08	N/A
9	Campana Deposition Transcript Excerpt, 8/20/08	N/A
10	Bridges Deposition Transcript Excerpt, 12/11/08	N/A
11	Chapman Deposition Transcript Excerpt, 12/15/08	N/A
12	Wells Deposition Transcript Excerpt, 12/15/04	N/A
13	Illinois Dept. of Public Aid, Description of Proposed FY '96 Budget Initiatives, 9/10/94	Roxane IL 5
14	Illinois Dept. of Public Aid, Memo from G. Hovanec to R. Wright re: IRMA/IPhA Budget Proposal, 5/1/95	Roxane IL 7
15	Illinois Dept. of Public Aid, Fax from R. Wright to R. Coolidge, SD Medicaid, 10/4/95	Roxane IL 8
16	Parker Deposition Transcript Excerpt, 11/18/08	N/A
17	Affidavit of Ron Gottrich	N/A
18	Shirley Deposition Transcript Excerpt, 12/2/08	N/A
19	Joyce Deposition Transcript Excerpt, 12/12/08	N/A
20	Gorospe Deposition Transcript Excerpt, 3/19/08	N/A

#	EXHIBIT DESCRIPTION	DEP. EXHIBIT
21	Gorospe Deposition Transcript Excerpt, 9/22/08	N/A
22	Denemark Deposition Transcript Excerpt, 12/9/08	N/A
23	Delaware response to September 1996 OIG Report	Dey 612
24	Dubberly Deposition Transcript Excerpt, 12/15/08	N/A
25	Terrebone Deposition Transcript Excerpt, 3/31/08	N/A
26	Terrebone Deposition Transcript Excerpt, 11/7/08	N/A
27	Tetkoski Deposition Transcript Excerpt, 12/11/08	N/A
28	Cheloha Deposition Transcript Excerpt, 12/2/08	N/A
29	December 1996, OIG Report, "Review of Pharmacy Acquisition Cost for Drugs Reimbursed Under The Medicaid Prescription Drug Program of the Nebraska Department of Social Services."	Dey 921
30	Vaccaro Deposition Transcript Excerpt, 12/2/08	N/A
31	Reed Deposition Transcript Excerpt, 9/26/07	N/A
32	Reed Deposition Transcript Excerpt, 9/27/07	N/A
33	Booth Deposition Transcript Excerpt, 10/29/07	N/A
34	Gaston Deposition Transcript Excerpt, 1/24/08	N/A
35	Vito Deposition Transcript Excerpt, 6/20/07	N/A
36	Buto Deposition Transcript Excerpt, 9/13/07	N/A
37	Jackson Deposition Transcript Excerpt, 12/12/08	N/A
38	Duzor Deposition Transcript Excerpt, 10/30/07	N/A
39	Vladeck Deposition Transcript Excerpt, 5/04/07	N/A
40	Chesser Deposition Transcript Excerpt, 10/28/08	N/A
41	1994 OIG Work Papers (Former BX)	N/A

#	EXHIBIT DESCRIPTION	DEP. EXHIBIT
42	September 18, 1986 HCFA Regional Administrator for Region VI letter	Abbott 1109
43	August 1989, The United States Senate Special Committee on Aging issued a Majority Staff Report titled, "Prescription Drug Prices: Are We Getting Our Money's Worth?"	Abbott 81
44	September 1989, OIG Management Advisory Report, "The Use of Average Wholesale Prices in Reimbursing Pharmacies Participating in the Medicaid and Medicare Catastrophic Coverage Act Prescription Drug Program."	Dey 46
45	59 Fed. Reg. 59524	N/A
46	October 1992, OIG Report "Cost of Dialysis-Related Drugs."	Abbott 82
47	November 1992, OIG Report "Physician's Cost for Chemotherapy Drugs"	Abbott 79
48	1993 GAO Report, "Medicaid - Outpatient Drug Costs and Reimbursements for Selected Pharmacies - Illinois and Maryland"	Abbott 458
49	Bill Alpert, June 1996, Barron's article, "Hooked on Drugs"	Abbott 16
50	August 1997, OIG Report, "Medicaid Pharmacy - Actual Acquisition Cost of Generic Prescription Drug Products"	Abbott 158
51	DHHS, Memo from J. Brown to B. Vladeck, 8/13/96	Abbott 84
52	December 1997 - OIG Report, "Excessive Medicare Payments for Prescription Drugs."	Abbott 49
53	November 1998 OIG Report, "Comparing Drug Reimbursement: Medicare and Department of Veterans Affairs"	Abbott 101
54	Duzor Deposition Transcript Excerpt, 3/26/08	N/A
55	Reed Deposition Transcript Excerpt, 10/2/08	N/A

#	EXHIBIT DESCRIPTION	DEP. EXHIBIT
56	September 2002 OIG Report – Medicaid Pharmacy – Additional Analysis of the Actual Acquisition Cost of Prescription Drug Products	N/A
57	Cobo Deposition Transcript Excerpt, 1/8/08	N/A
58	1998 CBO Report, “How Increased Competition From Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry”	Abbott 474
59	August 30, 2004 Medicaid and Medicare Drug Pricing: Strategy to Determine Market Prices: Final Report	Abbott 381
60	Medicare and Medicaid Programs; Limits on Payments for Drugs, 52 Fed. Reg. 28648 (July 31, 1987)	Abbott 284
61	September 1, 1987 Letter from Department of Health & Human Services to President of American Pharmaceutical Association regarding alternatives to change the Medicaid reimbursement regulations that determine upper limits on payments for prescription drugs	Abbott 762
62	August 1987 – Questions for HCFA on Medicaid Limits on Payments for Drugs	Abbott 763
63	Smith Deposition Transcript Excerpt, 2/26/08	N/A
64	Scully Deposition Transcript Excerpt, 5/15/07	N/A
65	Scully Deposition Transcript Excerpt, 7/13/07	N/A
66	DeParle Deposition Transcript Excerpt, 5/18/07	N/A
67	DeParle Deposition Transcript Excerpt, 12/5/07	N/A
68	Wiberg Deposition Transcript Excerpt, 3/14/08	N/A
69	Shirley Deposition Transcript Excerpt, 12/3/08	N/A
70	DOJ Response to Preliminary Injunction (December 6, 2007)	Abbott 1150
71	Expert Report of Louis B. Rossiter	N/A

#	EXHIBIT DESCRIPTION	DEP. EXHIBIT
72	HHS News Release re: 1987 Medicaid Regulations, HHC002-0524-25	N/A
73	Don M. Newman, Drug Topics, August 1987, (HHC902-1062-67)	N/A
73	HHS DAB Decision No. 1315, 3/18/07	Abbott 1153
74	Reed Deposition Transcript Excerpt, 3/20/08	N/A
75	March 13, 2008 Email regarding Abbott R30b6 requests	Abbott 757
76	September 28, 1987, "The Complicated History of Medicaid Regulations on Drug Reimbursement" by Robert B. Helms, Ph. D.	Abbott MD 005
77	Expert Report of Robert B. Helms	N/A
79	State Plans	N/A
80	Vaccaro Deposition Transcript Excerpt, 12/3/08	N/A
81	Avarista Deposition Transcript Excerpt, 12/4/08	N/A
82	Duzor Deposition Transcript Excerpt, 2/27/08	N/A
83	CBO Report, "Medicaid's Reimbursements to Pharmacies for Prescription Drugs," December 2004	Abbott 475
84	OIG Report, "Review of the Relationship Between Medicare Part D Payments to Local, Community Pharmacies and the Pharmacies' Drug Acquisition Costs (A-06-07-00107)," January 2008	Abbott 477
85	AWP-IL-00008066	N/A
86	Iverson Deposition Transcript Excerpt, 12/15/08	N/A
87	Record of Discussion (OIG/HCFR/Medicaid Pharmacy Reps.), 8/30/94-8/31/94	Dey 609
88	Denemark Deposition Transcript Excerpt, 2/10/08	N/A
89	Wells Deposition Transcript Excerpt, 8/15/06	N/A

#	EXHIBIT DESCRIPTION	DEP. EXHIBIT
90	McCann Deposition Transcript Excerpt, 11/07/07	N/A
91	Fine Deposition Transcript Excerpt, 12/9/08	N/A
92	Kenyon Deposition Excerpt, 3/25/08	N/A
93	March 1994 Medicaid Pharmacy Payments Actual Acquisition Cost & Estimated Acquisition Cost: Prepared by the Department of Social Services	Abbott 657
94	Farrand Deposition Transcript Excerpt, 10/28/08	N/A
95	CMS letter	Abbott 493
96	Myers & Stauffer, A Survey of Acquisition Costs in Pharmaceuticals in the State of California, June 2002	N/A
97	Myers & Stauffer Medi-Cal Report	Abbott Schondelmeyer 4
98	Hansen Deposition Transcript Excerpt, 12/11/08	N/A
99	Myers & Stauffer Reports, Alaska 1988-Kentucky 1998 (AUG)	Abbott-Hansen 005
100	A Survey of Acquisition Costs in Pharmaceuticals in the State of Louisiana, June 2002	N/A
101	Myers & Stauffer, Study of Medi-Cal Pharmacy Reimbursement, June 2002	Abbott Schondelmeyer Ex. 4
102	October 1, 2007 State Dispensing Fee Activities	Abbott 488
103	Maryland Pharmacy Coalition, Federal Deficit Reduction Act Memo, December 2006	Abbott 520
104	DHHS, C. Harris Letter to J. Garner, Illinois Dept. of Public Aid re: State Plan Amendment, 9/19/01	Abbott 769
105	Email from G. Duerr, IDHW, to Maria Garza, HHS, Summary of Conference Call, 12/10/01	Abbott 491
106	Clifford Deposition Transcript Excerpt, 10/29/08	N/A

#	EXHIBIT DESCRIPTION	DEP. EXHIBIT
107	Email from K. Howell to P. Carson re: Wisconsin SPA 01-009 Prescription Drugs, 3/25/02	Abbott 773
108	Wisconsin Legislative Fiscal Bureau, Joint Committee on Finance, Paper #474, Reimbursement Rates for Prescription Drugs (DHFS—Medical Assistance), 6/4/01	Abbott 1073
109	Bridges Deposition Transcript Excerpt, 12/10/08	N/A
110	Gorospe Deposition Transcript Excerpt, 12/03/08	N/A
111	Rosenstein Deposition Transcript Excerpt, 5/19/09	N/A
112	Walker Deposition Transcript Excerpt, 5/21/09	N/A
113	First Health Services Corp. Chart re: Nebraska Medicaid Program, 10/5/08	Dey 911
114	Oregon State Plan, HHC020-0382	N/A
115	OIG “Record of Discussion” (August 30-31, 1994)	Abbott 581
116	OIG “Record of Discussion” (September 27-28, 1995)	Abbott 582
117	DHHS Memorandum re: Review of Pharmacy Acquisition Costs for Drugs Reimbursed Under the Medicaid Prescription Drug Program of the Maryland Department of Health and Mental Hygiene, 2/12/97	Abbott 1064
118	Department of Health and Mental Hygiene memorandum with subject, “Office of the Inspector General (OIG) Report on Pharmacy Acquisition Costs,” April 16, 1997	Abbott MD 30
119	OIG Report, “Review of Pharmacy Acquisition Costs for Drugs Reimbursed Under the Medicaid Prescription Drug Program of the Virginia Department of Medical Assistant Services,” November 1996	Roxane VA 5
120	Tomlinson Deposition Transcript Excerpt, 11/3/08	N/A
121	Montana Response to OIG 1996 Survey	Abbott 327
122	Missouri Medicaid Response to OIG 1996 Survey	Roxane 144

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123	California Response to OIG 1996 Survey	Abbott 325
125	JDWA-00001731	N/A
126	JDWA-000144	N/A
127	JDWA-000233	N/A
128	Homar Deposition Transcript Excerpt, 12/2/08	N/A
129	March 1999, Myers and Stauffer report, "A Survey of Dispensing and Estimated Acquisition Costs of Pharmaceuticals in the State of Wyoming" prepared for the Wyoming Department of Health Division of Health Care Financing	Roxane WY 8
130	WY00000074	Roxane WY 9
131	Homar Deposition Transcript Excerpt, 12/3/08	N/A
132	Anderson Deposition Transcript Excerpt, 12/16/08	N/A
133	OIG Report, "Medicaid Pharmacy – Actual Acquisition cost of Generic Prescription Drug Products" March 2002	Roxane RI 12
134	Young Deposition Transcript Excerpt, 12/03/08	N/A
135	DHHS Memorandum re: Request for Policy Clarification on Tennessee's Interpretation of Usual and Customary Charges as Applied to Outpatient Drug Reimbursement—Action, 7/3/92	Abbott 579
136	CMS Medicaid Pharmacy Team "Review of Medicaid Drug State Plan Amendments"	Abbott 328
137	October 22, 2002, CMS Administrator Tom Scully Memorandum, "Review of Medicaid Drug State Plan Amendments." HHD830-000001-04	N/A
138	Howell Deposition Transcript Excerpt, 4/22/08	N/A
139	Riordan to Neimann and Reed – FDB AWP's for Injection Infusion and Inhalation Drugs, April 1999	Abbott 136

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140	February 16, 2000 NAMFCU's Lupinetti letter to Wyoming Pharmacy Director advising of the substance of the procedures FDB will adopt and the effect it may cause	Abbott 137
141	September 8, 2000 Program memorandum CMS to intermediaries and carriers with subject, "An Additional Source of Average Wholesale Price Data in Pricing Drugs and Biologicals Covered by the Medicare Program."	Abbott 184
142	Sept. 2001 OIG Report, <i>Medicaid's Use of Revised Average Wholesale Prices</i>	Abbott 95
143	Myers and Stauffer Analysis of DOJ AWP's	N/A
144	June 2002, Missouri State Auditor Report "Cost Containment for State Drug Expenditures" HHD340-0031-34	N/A
145	November 6, 2000 e-mail directing EDS not to use a new "Medicaid only" AWP pricing provided by First Data Bank (FDB) with attached memorandum to Susan P. Kennedy, Cabinet Secretary with subject, "Change in Prices for Medi-Cal Drugs."	Gorospe 14 (3/19/08 Dep)
146	Reed Deposition Transcript Excerpt 3/18/08	N/A
147	Gaston Deposition Transcript Excerpt, 3/19/08	N/A
148	June 22, 2000 Cody Wiberg Email to National Medicaid Pharmacy Administrators	Abbott 492
149	June 20, 2000 New AWP's – State by State Information and Reactions	Abbott 584
150	Email from M. Hazelwood to M. Schrober, 3/16/98	Roxane IL 10
151	Wimpee Deposition Transcript Excerpt, 11/24/08	N/A
152	JD WA 1570-87	N/A
153	HHC018-0045-50	N/A
154	Walsh Deposition Transcript Excerpt, 3/26/08	N/A

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155	7/25/96 Debus Letter to Steffen	Abbott 309
156	Rugg Deposition Transcript Excerpt, 12/15/08	N/A
157	Proposed Sliding Scale Reimbursement Formula for Generic Drugs	Abbott MD 17
159	Sexton Deposition Transcript Excerpt, 5/20/08	N/A
160	June 5, 1991 – DHHS Federal Register 42 CFR Parts 405 and 415: Medicare Program; Fee Schedule for Physicians’ Services; Proposed Rule	Abbott 120
161	56 Fed. Reg. 59502, 59621	Abbott 1020
162	1997 Balanced Budget Act – Title I – Food Stamp Provisions	Abbott 201
163	Abbott Exhibit 529 (HCFA Program Transmittal Memorandum, Transmittal No. AB-98-76), December 1998	Abbott 529
164	Rules and Regulations: Department of Health and Human Services: Health Care Financing Administration, 42 CFR Parts 405, 413, and 415	Abbott 301
165	HHD816-0025-27	N/A
166	March 15, 1994 Memorandum from Department of Health & Human Services to All Associate Regional Administrators for Medicare regarding, “Determination of Acquisition Cost of Drugs - - Information.”	Abbott 114
167	1999 Report to Congress, “The Average Wholesale Price For Drugs Covered Under Medicare” in 1999 (HHC902-0801-18)	N/A
168	Jones Deposition Transcript Excerpt	N/A
169	63 Fed. Reg. 58814	N/A
170	2001 GAO Report, “Medicare Part B Drugs: Program Payments Should Reflect Market Prices	N/A

#	EXHIBIT DESCRIPTION	DEP. EXHIBIT
171	Buto Deposition Transcript Excerpt, 9/12/07	N/A
172	Booth Deposition Transcript Excerpt, 4/23/07	N/A
173	Niemann Deposition Transcript Excerpt, 10/11/07	N/A
174	Berenson Deposition Transcript Excerpt, 12/18/07	N/A
175	Vito Deposition Transcript Excerpt, 6/17/07	N/A
176	Ragone Deposition Transcript Excerpt, 4/18/07	N/A
177	Tawes Deposition Transcript Excerpt, 4/24/07	N/A
178	Tawes Deposition Transcript Excerpt, 4/25/07	N/A
179	Thompson Deposition Transcript Excerpt, 3/28/08	N/A
180	DHHS Memorandum re: Implementation of the New Payment Limit for Drugs and Biologicals, January 1998	Abbott 1014
181	DHHS Memorandum re: Implementation of the New Payment Limit for Drugs and Biologicals, December 1998	Abbott 1015
183	DHHS Memorandum re: Implementation of the New Payment Limit for Drugs and Biologicals, 11/14/00	Abbott 1008
184	DHHS Memorandum re: Payment Limits for Drugs and Biologicals, 5/22/2002	Abbott 1011
185	Vito Deposition Transcript Excerpt, 2/5/08	N/A
186	Smith Deposition Transcript Excerpt, 3/27/08	N/A
187	2003 Compliance Program Guidance for Pharmaceutical Manufacturers	N/A
188	Clark Deposition Transcript Excerpt, 2/8/08	N/A
189	Stone Deposition Transcript Excerpt, 2/28/08	N/A
190	Stone Deposition Transcript Excerpt, 2/29/08	N/A
191	Veal Deposition Transcript Excerpt, 3/25/08	N/A

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192	Walker Deposition Transcript Excerpt, 3/12/08	N/A
193	Medicare Program Payment for Drugs – policy and proposal to eliminate the EAC criterion and add two others	Abbott 314
194	May 31, 2000 Shalala letter to Tom Bliley regarding response to letter received regarding Clinton Administration’s efforts to obtain fair prices for the limited number of drugs that Medicare currently covers	Abbott 213
195	December 13, 1997 White House Press Secretary – Remarks by President in Radio Address	Abbott 55
196	Vladeck Deposition Transcript Excerpt, 6/21/07	N/A
197	May 2000 Memo re: DOJ AWP	N/A
198	3/13/08 Letter from J. Draycott to D. Torborg	N/A
199	May 18, 2000 CMS Deputy Administrator Michael M. Hash Memorandum to HHS Deputy Secretary Kevin Thurm re: DOJ AWP. (HHC902-214-44)	N/A
200	“Medicare Average Wholesale Price (AWP) for Drug Pricing— DECISION. ” (HHD340-0001-04)	N/A
201	7/28/00 Letter to Shalala signed by 91 Members of Congress	Abbott 220
202	September 8, 2000 Program Memorandum regarding “An Additional Source of Average Wholesale Price Data in Pricing Drugs and Biologicals Covered by the Medicare Program.”	Abbott 138
203	HCFA Program Memorandum “Source of Average Wholesale Price Data in Pricing Drugs and Biologicals Covered by the Medicare Program” November 17, 2000	Abbott 221
204	Revisions to Average Wholesale Price Methodology (67 Fed. Reg. 74126)	N/A

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205	Medicare Modernization Act (42 U.S.C. § 1395u(o)(1)(A)(iv))	Abbott 194
206	Richter Deposition Transcript Excerpt, 12/7/07	N/A
207	Warren Deposition Transcript Excerpt, 11/6/07	N/A
208	60 Fed. Reg. 8951, 8953	N/A
209	1998 - Eli's Home Care Week Article	Abbott 54
210	Niemann Deposition Transcript Excerpt, 9/14/07	N/A
211	October 3, 2002 - Statement of the National Alliance for Infusion Therapy, and the National Home Infusion Association, Alexandria, Virginia	Abbott 18
212	70 Fed. Reg. 70116, 70225 (Nov. 21, 2005)	N/A
213	69 Fed. Reg. 66236, 66339 (Nov. 15, 2004)	N/A
214	70 Fed. Reg. 45764, 45847 (Aug. 8, 2005)	N/A
215	Muse & Assocs., The Costs of Delivering Inhalation Drug Services to Medicare Beneficiaries	N/A